2003 Annual Report

Nova Scotia Police Commission

NOVA SCOTIA

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NOVA SCOTIA

Police Commission

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November 4, 2005

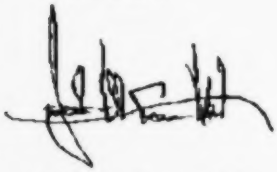
The Honourable Michael Baker, Q.C.
Minister of Justice
4th Floor, 5151 Terminal Road
P.O. Box 7
Halifax, NS B3J 2L6

Dear Minister:

I have the honour to submit to you the Annual Report of the Nova Scotia Police Commission for the calendar year 2003, pursuant to the provisions of Section 9 of the *Police Act*, R.S.N.S. 1989, Chapter 348.

Thank you for your continued support for the work of the Commission.

Yours truly,



Nadine Cooper Mont
Chairman
NCM/pjw

Mission Statement

The mission of the Nova Scotia Police Commission is to deliver judicious, timely, impartial, client-oriented service to the public, to the police services and to the police officers within its jurisdiction.

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Role of the Commission

The primary role of the Nova Scotia Police Commission is to investigate and conduct hearings on citizens' complaints alleging misconduct by municipal police officers. The Commission's Police Review Board is also empowered to hear and rule on police officer's appeals against disciplinary penalties or dismissals that are imposed or ordered by chiefs of police and boards of police commissioners.

The responsibilities of the Nova Scotia Police Commission are outlined in Sections 5 and 5(A) of the Police Act which states that: "The Nova Scotia Police Commission shall perform the functions and duties assigned to it by the Police Act, the Governor-in-Council or the Minister of Justice".

These responsibilities include the following:

1) consult with and advise boards of police commissioners and other police authorities and chiefs of police on all matters relating to public complaints and internal discipline;

2) conduct investigations and inquiries in accordance with the Act;

3) provide investigative and administrative support to the Review Board; and

4) make recommendations with respect to amendments to the Act or the Regulations, or to any other enactment dealing with law enforcement.

According to Section 8 of the *Police Act,* when requested by a board of police commissioners, or directed by the Minister of Justice, the Nova Scotia Police Commission is also required to investigate the conduct and performance of any member of a municipal police force, the administration of any police force, the system of policing in any municipality, and the policing needs of a municipality.

Furthermore, the Nova Scotia Police Commission, when directed by the Minister of Justice, is responsible for inquiring into any matter relating to the extent, investigation or control of crime as well as the enforcement of law.

Administrative History

The Nova Scotia Police Commission was established by proclamation of the *Police* Act in 1976. At that time, the Police Commission reported to the Attorney General; it was responsible for improving the effectiveness of municipal police forces and relations between the police and the public. Initially the Police Commission provided a large number of services relating to provincial policing and security including:

1) development and approval of training programs for police officers;
2) development of programs to improve public awareness of police functions, duties and responsibilities;
3) maintenance of statistics and research services;
4) determinations of the adequacy, efficiency, and effectiveness of the police services provided by municipalities;
5) recommendations for appointment or re-appointment of Provincial Civil constables, Special Constables, and By-Law Enforcement Officers; and
6) other duties under the Private Investigators and Private Guards Act and the Police Services Act.

In 1992, changes to the *Police Act* resulted in the re-organization and re-orientation of the Nova Scotia Police Commission. The majority of the services listed above were transferred to the Police and Victim Services Division of the Department of the Solicitor General. These services are now the responsibility of the Department of Justice. The Police Commission retained its responsibility for investigating into matters relating to the conduct and performance of duties by police, the administration of a police force, the system of policing in municipalities, and the police needs of municipalities.

The Police Commission investigates, and when appropriate, attempts to negotiate a resolution to public complaints upon an appeal by the complainant. If the investigator determines that the complaint has merit he/she will recommend a full hearing before the Nova Scotia Police Review Board.

Where the Police Commission's investigator cannot satisfactorily resolve a complaint, or has determined the complaint does not merit a complete review by the Nova Scotia Police Review Board, he/she may refuse to recommend a hearing. The complainant may seek an order to refer the complaint to the Police Review Board by appealing the decision of the investigator to the full body of the Police Commission.

The Nova Scotia Police Review Board was established through amendments to the Police Act in the mid-1980's. It replaced the Police Commission as the adjudicating body for citizen complaints and for appeals against decisions made in internal discipline matters. The Board also conducts hearings into matters of internal discipline that are referred to it by the Police Commission. The Chairman of the Police Commission also acts as the Registrar of the Police Review Board, and the Police Commission is responsible for providing all of the administrative support needed by the Police Review Board to carry out its responsibilities.

Commission & Review Board Membership

Under the provisions of Section 4(1) of the Police Act, the Commission is composed of not less than three persons appointed by the Governor-in-Council.

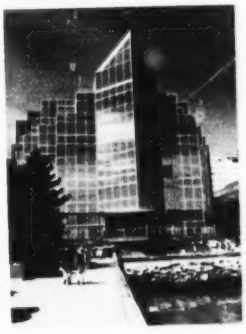
As of December 31, 2003 the members of the Police Commission and Police Review Board were:

Members of the Police Commission		Members of the Police Review Board	
Nadine Cooper Mont	Chair	Marion Ferguson	Chair
Denise Mentis-Smith	Vice Chair	Lester Jesudason	Alternate Chair
Paul D. Gates	Member	Orville Symonds	Alternate Member
Betty Thomas	Member	Brian McIntosh	Alternate Member
Frances Hinton	Member	Charles Schafer	Member
Daniel Paul	Member	Peter James	Alternate Member

Commission Staff

E. Garry Mumford	Director
Pamela J. Whittaker	Coordinator to the Commission & Review Board
Norma MacDonald/Judy Baxter	Secretary to the Director

Staff Offices



The Nova Scotia Police Commission offices are located at Summit Place, 1601 Lower Water Street, Suite 300, Halifax, Nova Scotia.

Mailing Address: P. O. Box 1573
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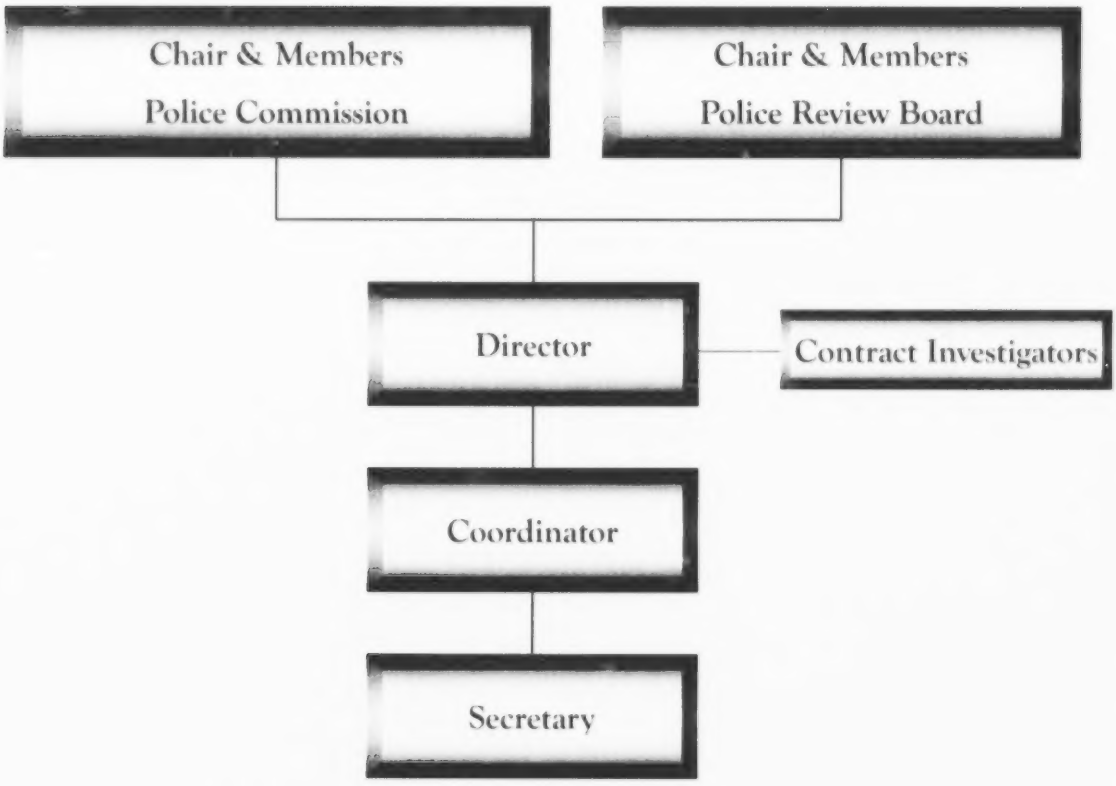
Organization Chart



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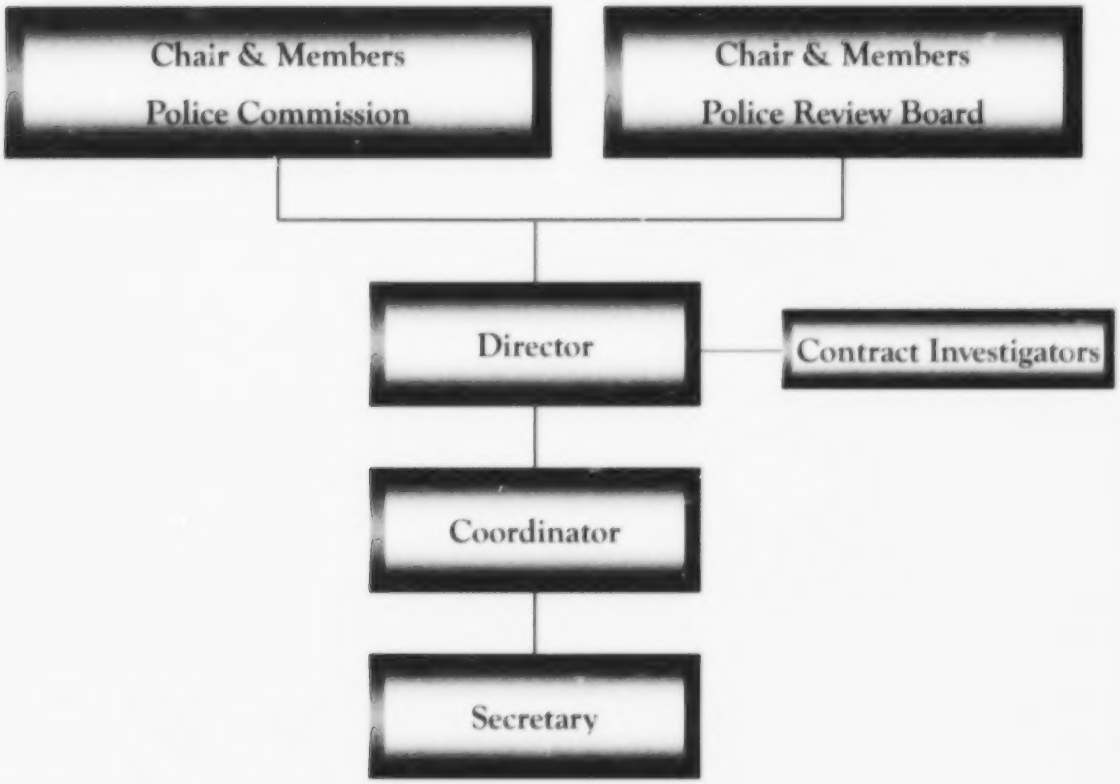


Activities of the Commission

During the reporting year the Commission met to review appeals submitted to it as outlined in Section 15 of the *Police Act* Regulations, and also to attend to regular business items. Two meetings were held in 2003. In those two meetings the Commission, in its quasi-judicial function, heard three appeals arising from the Commission investigator's decisions not to refer these matters to the Police Review Board. In all three cases the Commission upheld the investigator's decision to not refer the complaint to the Police Review Board for a hearing.

As Director of the Nova Scotia Police Commission, Mr. E. Garry Mumford routinely represents the Police Commission at various meetings and conferences. Among the events and/or presentations he attended or hosted in 2003 are the following:

- April 8 - Made a presentation to NCO's, Officers and Chiefs of CBRPS in Sydney
- April 11 - Met with members of Concerned Citizens Committee in Springhill
- April 17 - Made a presentation to Westville Board of Police Commissioners and CAO
- April 30 & May 1 - Attended Nova Scotia Association of Chiefs of Police meeting in Truro
- July 10 - Made presentation to supervisors and management of New Glasgow, Stellarton, Trenton and Westville Police departments
- October 3/10 Attend Annual CACOLE conference in Banff, Alta
- December 8 - Attend reception for retiring C.O. of "H" Div RCMP at Government House

Ministerial Inquires

Pursuant to Section 8 of the *Police Act* the Minister of Justice, the Honourable Michael G. Baker, Q. C. , directed the Nova Scotia Police Commission to conduct two inquires. The James Guy Bailey Inquiry concluded its evidentiary and final arguments in May of 2003.

James Guy Bailey Inquiry

Shortly before 9:00 p.m. on May 16, 2000, James Guy Bailey Jr. of Sydney Mines, N.S. was arrested by a member of the Cape Breton Regional Police Service for being intoxicated in a public place. He was subsequently incarcerated in the police cells at the Central Lock Up of the Cape Breton Regional Police H.Q.'s in Sydney. Shortly before 2:00 a.m. on May 17, 2000, the on duty gaol guard found Mr. Bailey to be unresponsive. He did not respond to emergency resuscitation efforts at the gaol and was transported to the emergency department of the Cape Breton Regional Hospital where he was pronounced dead at about 2:45 a.m.

On the 25th of January, 2001 pursuant to Section 8 of the Police Act, the Honourable Michael G. Baker, the Minister of Justice and Attorney General, in and for the Province of Nova Scotia, directed the Nova Scotia Police Commission to inquire into and report to him on matters related, either directly or indirectly, to the death of James Guy Bailey. Minister Baker further directed that the scope of the inquiry would be as follows:

- inquire into, investigate and report on any of the matters described in clauses 8 (2)(a) & (b) of the Police Act and which the Commission determines are, directly or indirectly, related to the death of James Guy Bailey;
- inquire into, investigate, and report upon the involvement of any member of the Cape Breton Regional Police Service or any of its employees, or of any other person who, as determined by the Commission, may have information related, directly or indirectly, to the death of James Guy Bailey;
- inquire into, investigate, and report upon all investigations, documents, reports, files reviews analyses, assessments, evaluations, and related material (including material retained in electronic format, and/or video recordings, and/or voice recordings), which the Commission determines may be relevant to this inquiry;
- inquire into, investigate and report whether there was compliance with applicable statutes, regulations, orders, rules or directions;
- inquire into, investigate and report upon any matter which the Commission determines may be relevant to this inquiry.

During the course of the investigation in excess of 100 people were interviewed either through the Cape Breton Regional Police Service investigation, the Ontario Provincial Police investigation or through the Commission investigation. Hundreds of pages of documents related to this matter were obtained, reviewed and catalogued by Commission staff, all of which was disclosed to the various legal counsels.

M. Jean Beeler was named as Chair of the Inquiry. Ms. Beeler selected two other Commission members, Betty Thomas and Frances Hinton sit on the Inquiry with her. Commission Investigator Dennis Squires also led this investigation, and Jean McKenna was once again engaged as counsel. Ms. McKenna's principal task was the presentation of witnesses and exhibits. As well, she acted as advisor and legal counsel to the Commission and to the Inquiry.

The Director of the Police Commission, Gary Mumford, synchronized the efforts of the investigation and the preparation for these public hearings. The Executive Secretary, Pamela Little, compiled and distributed the documents, and coordinated the dates and venues for the proceedings.

On October 22, 2001 a preliminary meeting was held in Sydney, Nova Scotia with all counsel to the proceedings. Pursuant to the *Police Act*, persons likely to be directly affected by the investigation or inquiry were entitled to reasonable legal fees for their necessary representation in the course of the inquiry. In all, the Commission identified ten parties. During the preliminary meeting, all of the material collected during the three investigations was released to the parties.

The evidentiary part of the Inquiry began with a three week sitting in February, two weeks in October and a further week in November in Sydney, Nova Scotia in 2002. An additional four weeks of evidence and final arguments were heard in February and May of 2003.

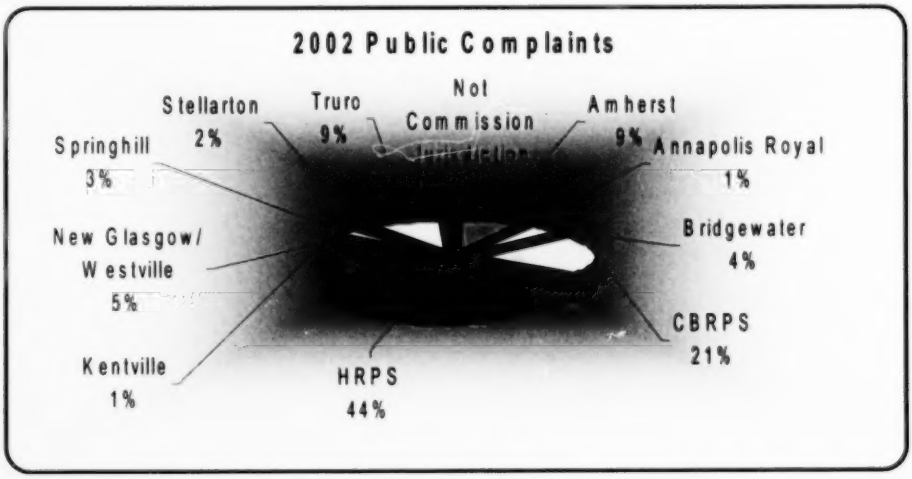
Public Complaints & Internal Discipline

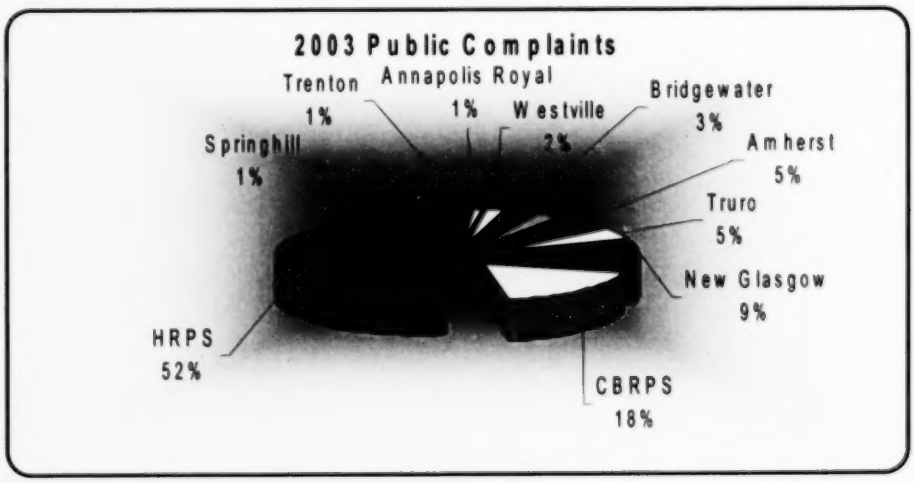
The table below depicts the number of public complaints and internal disciplinary matters received from each of the 12 municipal police departments over the last two years by the Nova Scotia Police Commission.

Department	2002		2003	
	PC	ID	PC	ID
Amherst	12	2	8	2
Annapolis Royal	1	0	2	0
Bridgewater	6	0	4	0
CBRPS	30	4	29	13
HRPS	62	15	84	12
Kentville	1	0	0	0
New Glasgow	7	0	14	0
Springhill	4	0	1	0
Stellarton	3	0	5	1
Trenton	0	1	1	0
Truro	13	8	8	3
Westville	0	0	3	0
Not Commission Jurisdiction	1	0	0	0
Totals	**140**	**30**	**159**	**31**

PC = Public Complaints
ID = Internal Discipline

Public Complaints - A total of 159 public complaints were received in 2003. This represents a 13% increase over the number filed with the Commission in 2002.





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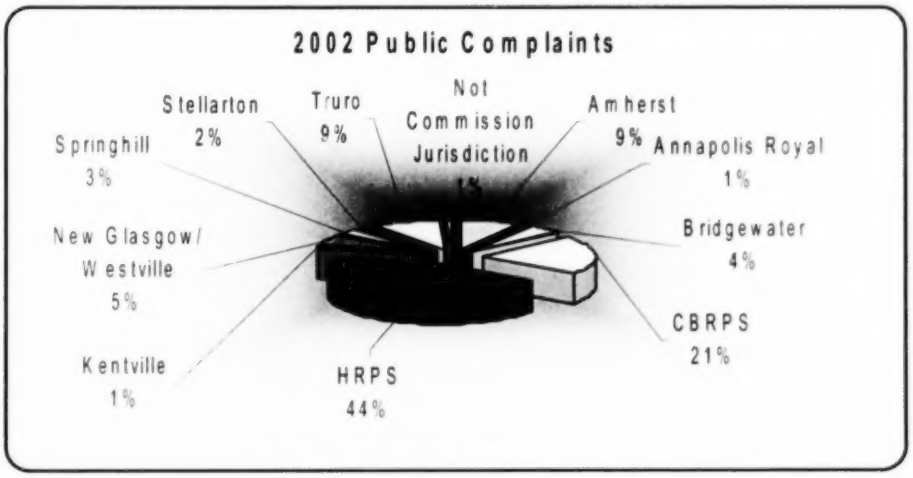
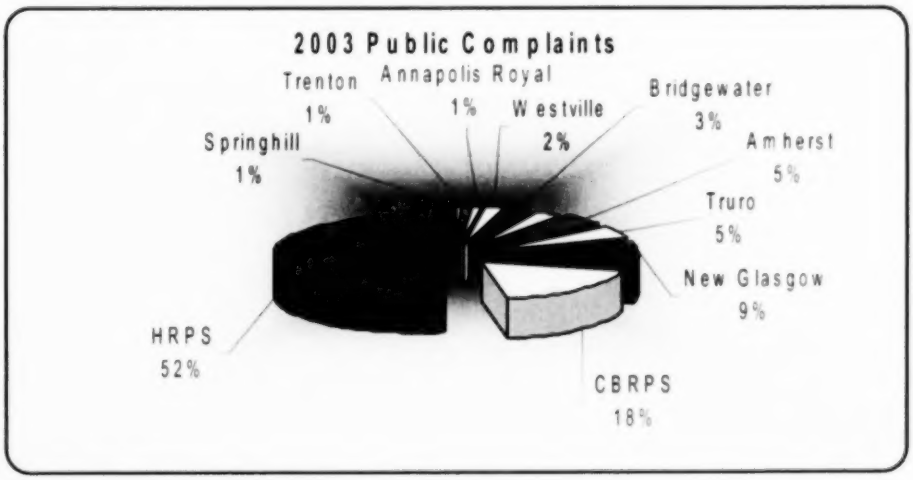
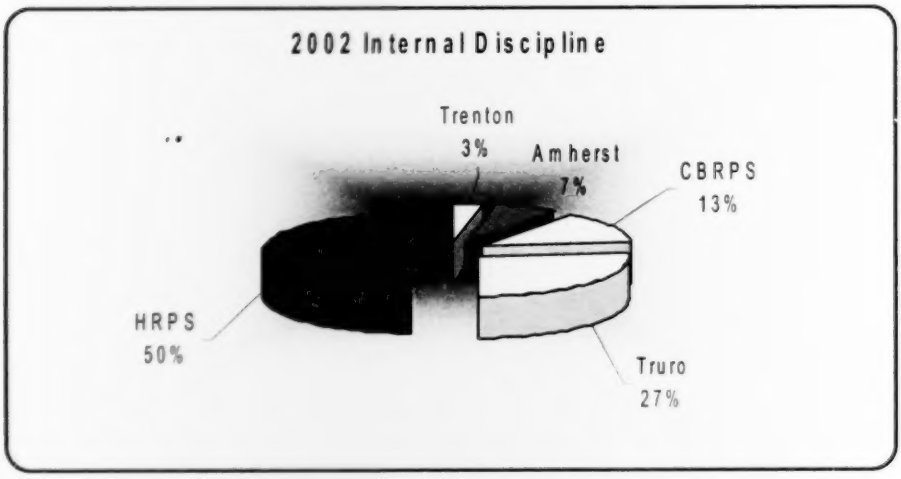
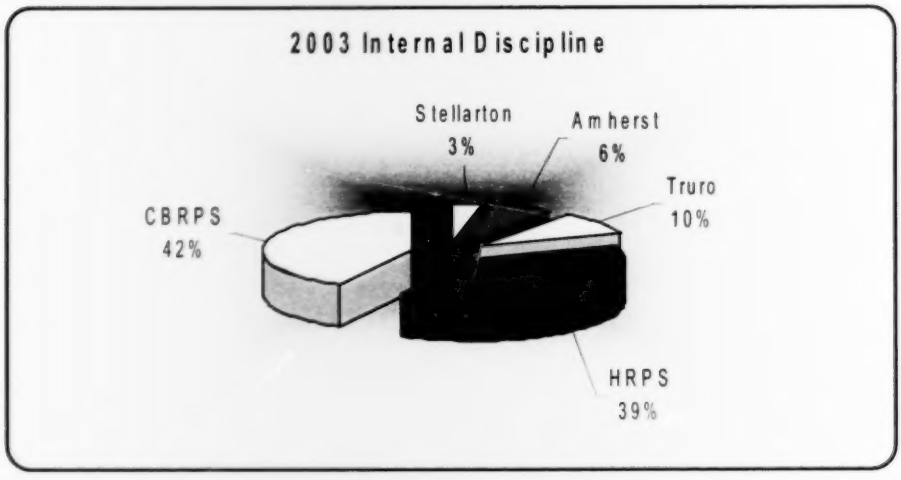




Internal Discipline - A total of 31 internal disciplinary matters were received in 2003. This represents a .03 percent increase from the number filed with the Commission in 2002.





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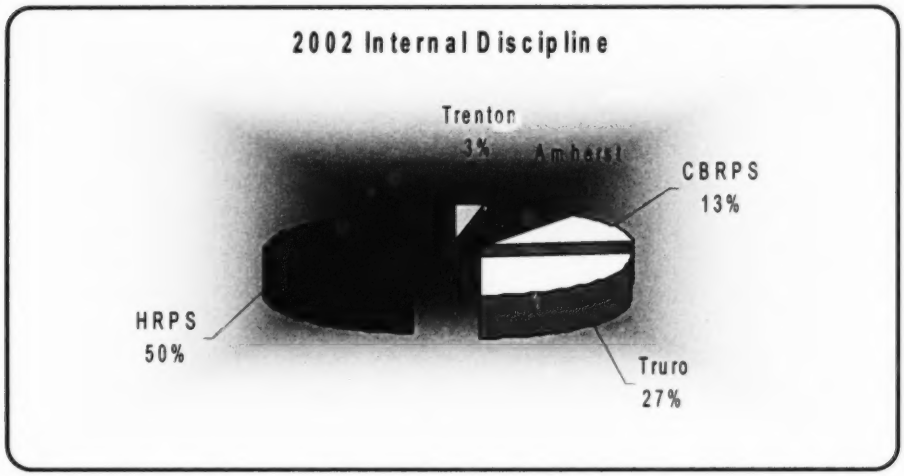
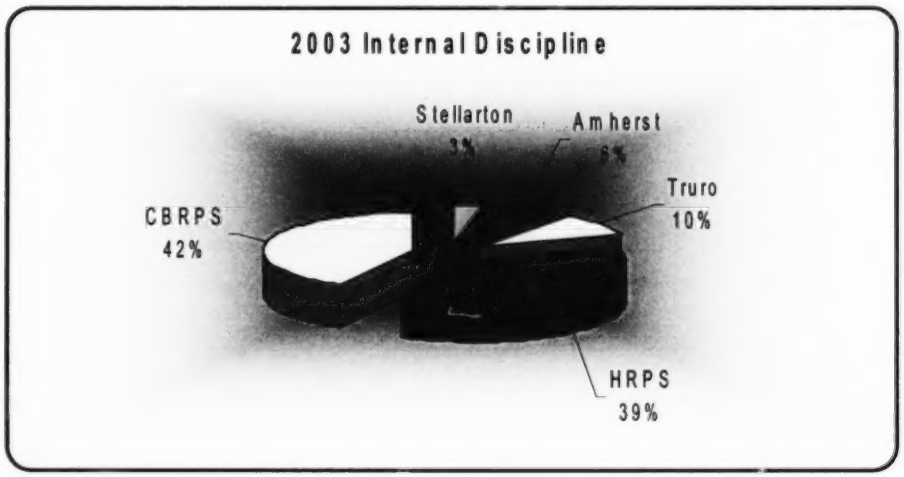




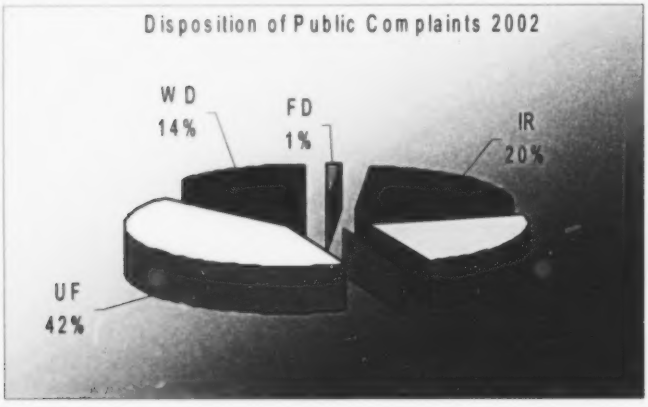
Allegations & Founded Defaults

A complaint may contain several allegations, therefore, in order to more accurately reflect the nature of complaints the table below indicates the total number of allegations captured from both the public and internal files opened in 2003.

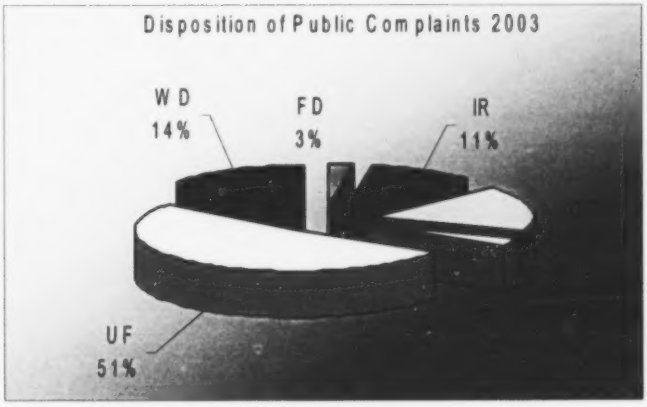
Abrev.	Alleged Defaults	Public	Founded	Internal	Founded
AA	Abuse of Authority	128	2	3	1
CP	Corrupt Practice	1	0	2	0
ED	Engages in Deceit	8	0	4	0
DC	Discreditable Conduct	93	2	24	9
ID	Improper Disclosure	5	0	0	0
IUF	Improper use of Firearm	4	0	1	0
INS	Insubordination	0	0	3	1
ND	Neglect of Duty	61	2	11	4
PE	Public Expectation	6	1	0	0
DP	Damages Property	2	0	0	0
HRA	Human Rights Act	1	0	3	1
CLD	Consumes Liquor or Drugs	0	0	0	0
	Totals	**309**	**7**	**51**	**16**

Disposition of Public Complaints

Disposition - Public	Abbreviation	2002	2003
Founded	FD	2	4
Informal Resolution	IR	28	17
Other (1)	OT	31	28
Still Under Investigation (3)	SUI	1	5
Unfounded (2)	UF	59	82
Withdrawn	WD	19	23
	Total	**140**	**159**



These graphs illustrate the percentage of complaints filed with the Nova Scotia Police Commission in 2002 and 2003 and their disposition at the printing of this report.



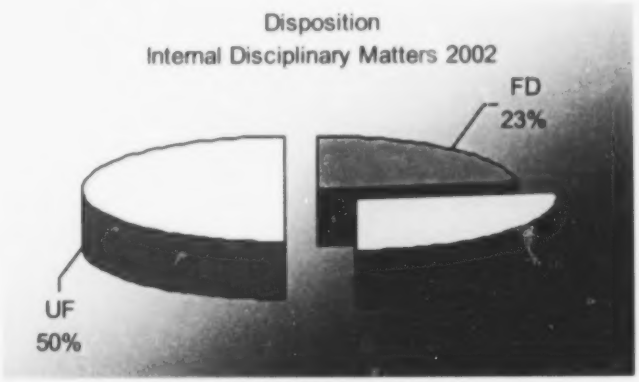
(1) Other includes: Filed beyond eligible time period, extensions not granted, officers resigned, criminally investigated.

(2) Unfounded: can result from: (a) investigated and deemed unfounded at the department level; (b) not appealed by the complainant or deemed unfounded by the Police Review Board as a result of a hearing.

(3) Still Under Investigation: includes at the Department level, the Commission level or awaiting hearing.

Disposition of Internal Disciplinary Matters

Disposition - Internal	Abbreviation	2002	2003
Founded	FD	7	12
Awaiting Review Board Hearing	ARBH	0	0
Other [1]	OT	8	3
Still Under Investigation	SUI	0	0
Unfounded	UF	15	16
	Total	30	31



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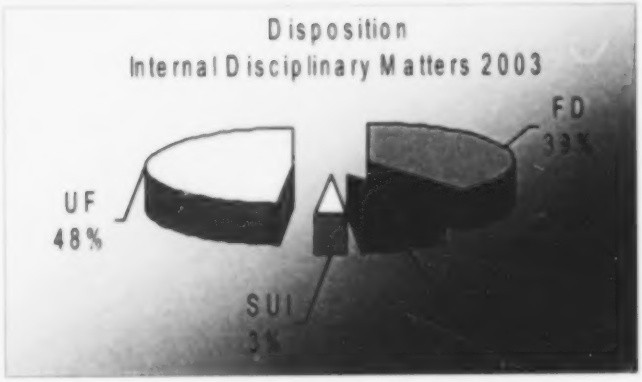
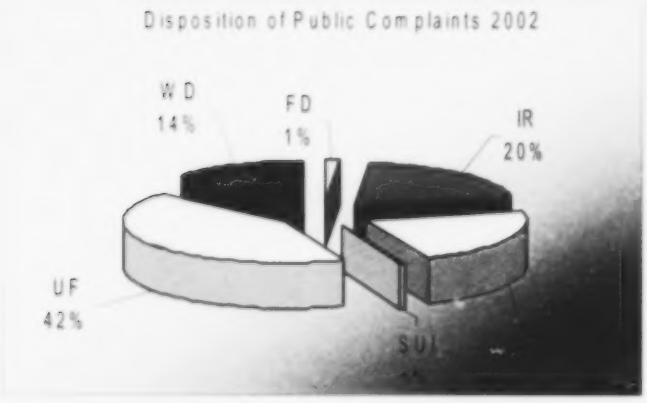


1. Other includes: Abandoned with no decision by the authority, no jurisdiction or member retired before investigation completed.

Disposition of Public Complaints

Disposition - Public	Abbreviation	2002	2003
Founded	FD	2	4
Informal Resolution	IR	28	17
Other (1)	OT	31	28
Still Under Investigation (3)	SUI	1	5
Unfounded (2)	UF	59	82
Withdrawn	WD	19	23
	Total	**140**	**159**



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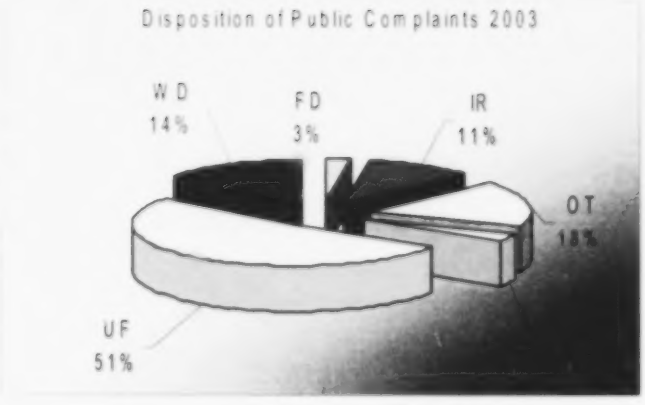
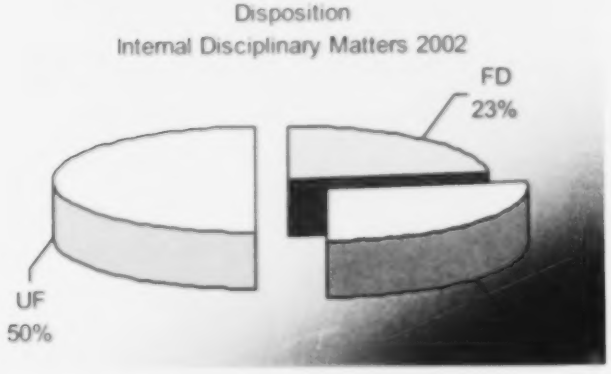


Disposition of Internal Disciplinary Matters

Disposition - Internal	Abbreviation	2002	2003
Founded	FD	7	12
Awaiting Review Board Hearing	ARBH	0	0
Other [1]	OT	8	3
Still Under Investigation	SUI	0	0
Unfounded	UF	15	16
	Total	30	31



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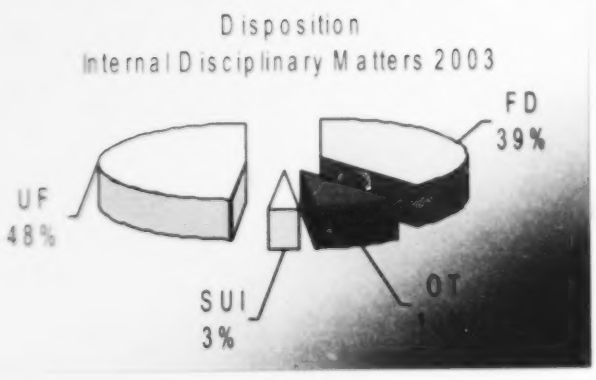

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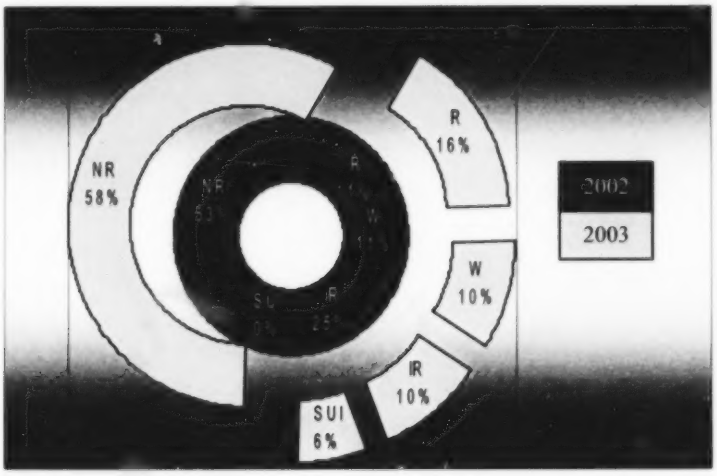
Appeals to the Commission

The Police Commission investigated 31 appeals by complainants in 2003 arising out of complaints that were not sustained at the department level.

The disposition of these matters are itemized in the tables below:

Legend	Abbreviation	2002	2003
Investigator referred to Police Review Board	R	3	5
Complaint Withdrawn	W	3	3
Complaint Informally Resolved by Investigator	IR	7	3
Still under investigation by Commission	SUI	0	2
Investigator did not refer to Police Review Board	NR	15	18
Totals		28	31
% of Complaints not referred		53%	58%

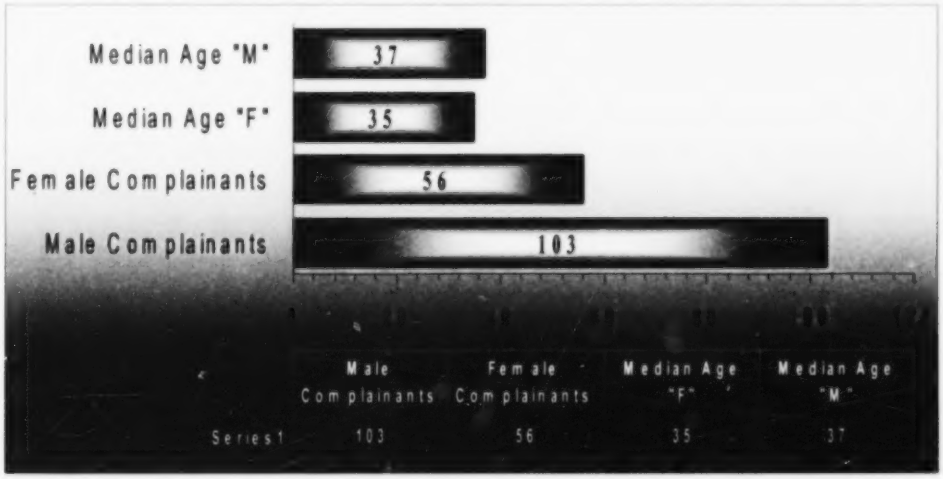


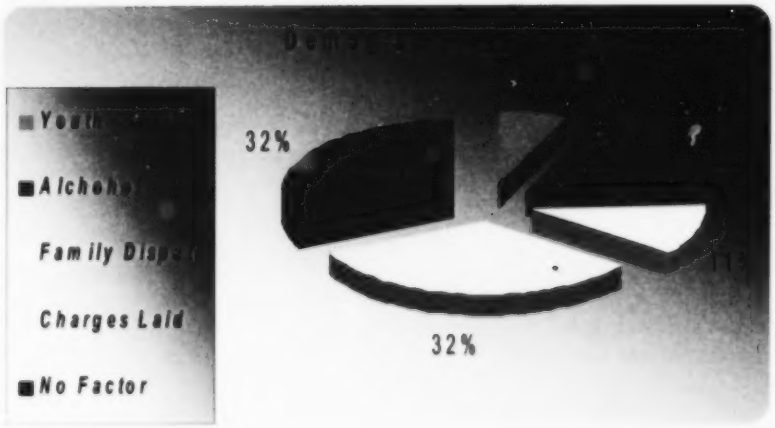
Of the 18 matters not referred to the Review Board by the Commission Investigators, 14 complainants appealed this decision to the Commission. The Commission overruled the Investigator in 1 of these appeals.

Demographics

In 2003 there were 56 complaints filed by women with a median age of 35. Men accounted for the other 103 public complaints filed; their median age is 37.

The figures shown below indicate the actual number of instances in 2003 where there were reports of alcohol involvement, youth involvement, charges laid; and/or family disputes on the part of the complainants or other parties. All data has been collected from the complaint form or from investigation reports.





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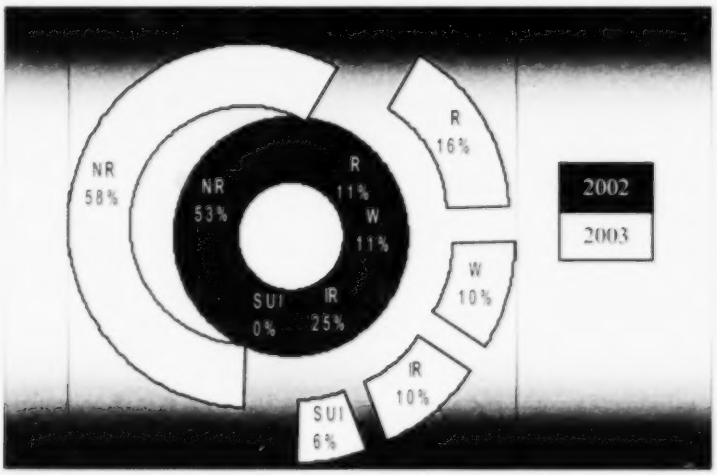
Investigator did not refer to Police Review Board	NR	15	18
Totals		28	31
% of Complaints not referred		53%	58%

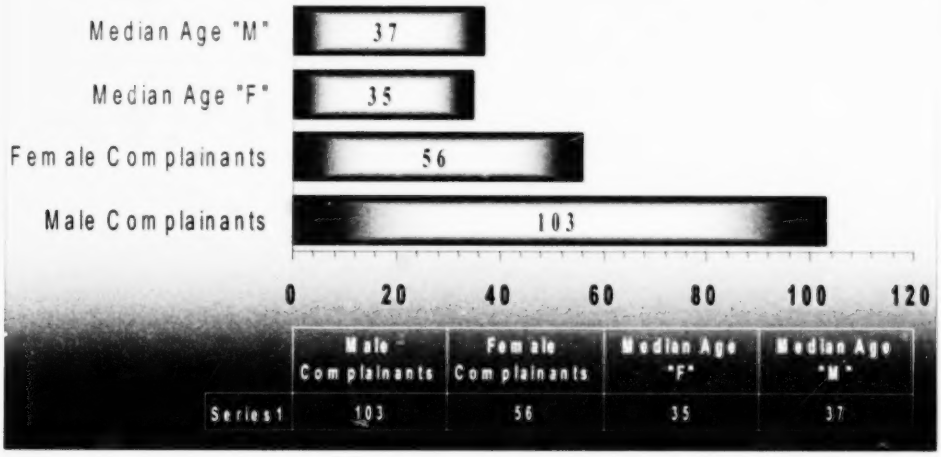


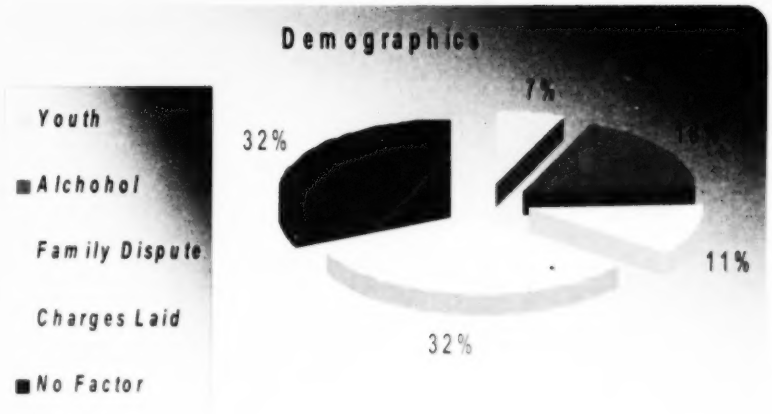
Of the 18 matters not referred to the Review Board by the Commission Investigators, 14 complainants appealed this decision to the Commission. The Commission overruled the Investigator in 1 of these appeals.

Demographics

In 2003 there were 56 complaints filed by women with a median age of 35. Men accounted for the other 103 public complaints filed; their median age is 37.

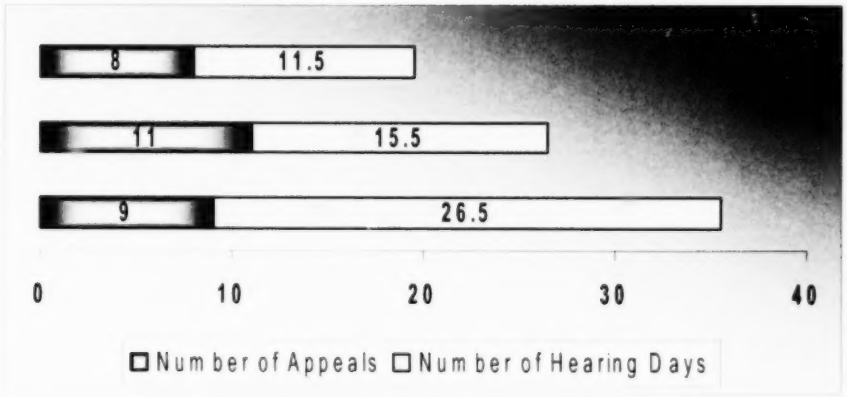
The figures shown below indicate the actual number of instances in 2003 where there were reports of alcohol involvement, youth involvement, charges laid; and/or family disputes on the part of the complainants or other parties. All data has been collected from the complaint form or from investigation reports.





Police Review Board Hearings

	2001	2002	2003
Number of Appeals	9	11	8
Number of Hearing Days	26.5	15.5	11.5



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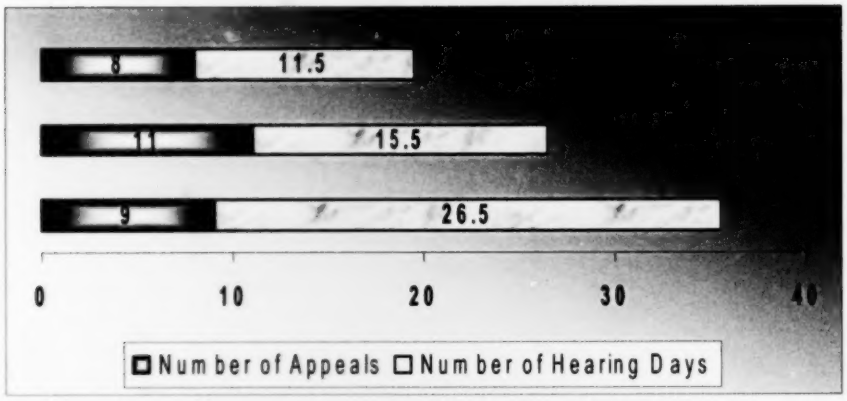

Noteworthy Police Review Board Decisions

Case No 1: Appeal of a disciplinary decision as a result of an internal allegation.

Nature of Complaint: Engaged in discreditable conduct by acting in a disorderly manner or in a manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the Police Force, engaged in deceit by willfully or negligently making a false, misleading or inaccurate statement or entry in an official document or record and, in corrupt practice by directly or indirectly soliciting or receiving a payment, gift, pass, subscription, testimonial or favour without the consent of the Chief Officer.

Hearing Dates: March 3, 4 & 5, 2003

Before: Ms. Marion Ferguson, Chair

Mr. Brian McIntosh, Member

Mr. Peter James, Member

Counsel: Mr. Joel Pink, Q.C., on behalf of the named Constable

Ms. Karen Fitzner, on behalf of the Halifax Regional Police, and the Acting Deputy Chief

Date of Decisions: **Merits:** April 29th, 2003

Penalty: August 28, 2003

Summary of Decisions:

This matter came before the Nova Scotia Police Review Board by way of a Form 13 Notice of Review filed on December 6, 2002, by a constable of the Halifax Regional Police (HRP) in relation to a December 3, 2002 decision of the Acting Deputy.

At approximately 8:00 a.m. on July 8, 2002, the Constable and his partner were dispatched to the Dartmouth home of Mr. and Mrs. "K", to take delivery of a vintage German Luger, which Mr. "K" had voluntarily decided to turn in for destruction. Both Constables attended at the home, had conversation with the "K"s which lasted

for at least an hour, and the gun was then removed from the "K" home and taken to the HRP Department in Dartmouth.

The gun remained in an exhibit locker at that location for two days and was then taken to the named constable's home. Approximately two weeks later, on July 26th, 2002, the constable was suspended from duty.

The first allegation the Board dealt with was did the constable engage in discreditable conduct in relation to *(an alleged)* statement he made to Mr. and Mrs. "K" about having a Firearms Acquisition Certificate (FAC).

Mr. "K" testified that during this discussion with the constable, the officer told him that he had an FAC and it was at this point, on account of the officer's interest in the Luger, his apparent appreciation of history, plus the fact that he had the requisite FAC to possess the gun, that Mr. "K" spontaneously decided to give him the gun. He further testified that the constable advised that he did not have his FAC with him but undertook to return with the FAC number, once his present duty rotation was over. In cross-examination, Mr. "K" confirmed that at no time did he feel under any pressure from the Constable to give him the gun and that both officers had been "gentlemen" during the visit.

Sometime around July 19, 2003 , when, although he had spoken with the constable on the telephone on at least two occasions, had nevertheless been unable to resolve the matter of obtaining the FAC number. Mr. "K" stated he contacted the Federal Department of Justice's Central Registry, and was advised that Constable Johnson did not have an FAC, but held a POL.

The constable testified that as an HRP officer he had completed the two day Canadian Firearms Safety Course (CFS), and was under the belief that this entitled him to an FAC. The constable stated that he had never owned a gun before receiving his service weapon and assumed the original form given during the CFS course entitled him to an FAC. It was his evidence that shortly before the matter with the "K"s in July 2002, he had moved house and so many of his personal papers, including his police training materials were packed away. It was his intention to go through those boxes and locate his FAC number as promised to Mr. "K", when time permitted.

The Board found that the constable was under the impression that he had an FAC and that this was not a wholly unreasonable, though mistaken, assumption on his part and did not find he had engaged in discreditable conduct.

The second issue the Board ruled on was did the constable engage in deceit in relation to the miscellaneous text he entered on the unit history for the shift: *"Comp does not wish weapon destroyed due to historic piece. Comp will be looking at other options for weapon disposition. NFA."*

The constable made the above notation on the police vehicle computer, and testified that the "NBK" (notebook) reference meant "matter being closed...no follow up" The constable maintained that the entry was a true and accurate representation of what the status of the gun was at the time.

The Board found the entry incomplete, false and misleading. Physical control and responsibility for the gun had been transferred to the constable. Moreover, the Board found that a reasonable person reading the entry would be left with the impression that the caller had changed his mind about turning the gun in. The majority finding of the Board confirmed the constable had committed deceit by contravening *Regulation 5(1)(d)(i)* of the *Police Act.*

The final issue before the Board was did the constable engage in a corrupt practice contrary to section *5(1)(f)(ii)* by accepting a 9mm Luger handgun as a gift from Mr. "K".

Counsel for the constable argued that as the definition of corrupt practice does not appear to have been defined in previous Board decisions, reference should be made to criminal law to see how the courts have interpreted the phrase and he supplied case law.

The majority of the Board found the language of the regulation was clear and categorical. The *Police Act* states that accepting a gift, which clearly the gun was, without the consent of the Chief Officer, is a violation of the *Act* and he had contravened *Regulation 5(1)(f)(ii).*

MINORITY DECISION

This Board member did not agree the constable had contravened *Regulation 5 (1)(d)(i) or 5(1)(f)(ii).*

In relation to 5(1)(d)(i) this Board member concluded that the constable did not intend to mislead his superiors by the computer entry but that it was intended as a brief note to file indicating that the caller had changed his mind about destroying the weapon and no further action was required by the police. This Board member further concluded that the incident was entirely inconsistent with the constable's professional performance record, or his character references that according to the evidence presented was unselfishly dedicated to his profession, admired by his peers, trusted by his immediate superiors and respected by the public for him to intentionally set out to deceive the HPD for the sole purpose of acquiring an antique pistol. Therefore this member did not support the Majority Board's decision.

In relation to *5(1)(f)(ii)* this Board member agreed with the majority decision that the constable accepted the gun as a gift while on duty without the consent of the Chief of Police and consequently contravened Section 5 (1)(f)(ii) of the Police Act Regulations. However, the Board Member concluded that this that this was an error in judgment and that there was no conclusive finding of "deceit" and the conclusion of the Majority Board is entirely inconsistent with Constable Johnson's character and professional performance.

In conclusion all Board members were unanimous in their findings that the constable did not use his position of authority as a police officer to intimidate or place undue pressure on the member of the public to make the gift and he made no prom-

ises of influence or favour. The constable made errors in judgment that led to a very difficult period for him personally and professionally. It was also noted that the two findings of disciplinary default arose from a singular set of facts and did not establish a pattern of misconduct.

Penalty Imposed

The Review Board found that the appropriate penalty in the circumstances was a fine of fifteen hundred dollars ($1,500.00) to be paid by the Constable within one month of the date of this decision and a reprimand. It is the Review Board's view that this disposition reflects the seriousness of the misconduct, while at the same time taking into account the unusual circumstances of the case

Case No 2:	Application to file a complaint outside of the 30 time limit.
Nature of Complaint:	An application filed by member of the public for an extension in time to file a complaint against a constable with the Halifax Regional Police
Hearing Dates:	June 24, 2003
Before:	Ms. Marion Ferguson, Chair Mr. Lester Jesudason, Alternate Chair Mr. Brian McIntosh, Member
Counsel:	Complainant on behalf of himself Mr. Patrick Duncan, Q.C. on behalf of the Constable
Date of Decisions:	Oral Decision: June 24, 2003 Written Decision: August 21,2003

Summary of Decisions:

This matter came before the Nova Scotia Police Review Board sitting at Halifax, Nova Scotia on June 24, 2003 by way of an application by the complainant to extend the time to file his complaint against a constable Halifax Regional Police Service, under *section 8* of the *Police Act Regulations*

On April 7, 2003, the Complainant, filed a public complaint and an application to extend the time to file his complaint in regard to November 23, 2002 incident involving a motor vehicle accident between his car and a car driven by the constable. The April 7, 2003 filing date was outside the 30 day period set out in the *Regulations*

Counsel for the constable and the HRP agreed that the complaint had been filed within six months of the occurrence, that the complainant had commenced his application to extend time within the statutory time limit as established by the *Act*, and that proceeding with the complaint would not cause the involved officer any undue prejudice as contemplated by *Regulations 8(2)(a)(b) & (d)*.

Hence, the only matter considered on this application if there were reasonable grounds as prescribed in *Regulation* 8(2)(c). In his submission before the Review Board, the Applicant presented his own case and gave evidence on his own behalf.

The complainant testified that he was involved in a motor vehicle accident in the Highfield Park area of Dartmouth, with a police car driven by Halifax Regional Police Constable. The complainant stated he was later advised by his insurance company that he had been found responsible for the accident, a decision he felt was wrong. He alleged that the officer was not truthful in relating how the accident had occurred and that he is not "in this" to re-coup the $1,000 in damages to his vehicle. His reason was that he wanted a further investigation to determine whether the constable was truthful in her reporting of the accident. Counsel on behalf of the constable and the HRP did not consent to the application being granted.

That being said, Mr. Duncan did acknowledge that after hearing the complainant's evidence, his client had a better understanding of the nature of the complaint and that it was more than a simple disagreement as to the finding of liability on the part of an insurance company.

Mr. Duncan argued that the Review Board that every instance where a person is disgruntled by the decision of the policing authority should not necessarily move forward to adjudication by the Review Board.

The Board concluded that it is clear under the *Police Act Regulations* that a public complaint is to be filed within 30 days of the event complained of. The complainant stated that he did not do this because he was unaware of the limitation period, had not sought legal advice in relation to the matter, and only became aware that he would have a complaint when he was advised by the insurance company in April, 2003, that, after reviewing all the reports filed with the police, it was he who was being found responsible for the November 23, 2002 accident.

The Board also concluded that while the *Police Act* puts in place a structure to allow public complaints against police officers to be resolved as fairly and as expeditiously as possible this must be done in a manner that serves the general interest of both the public, the individual and the specific interest of the parties.

Fairness for the complainant, the police officer and the process are best ensured when a complaint is filed in a timely fashion. Clearly, the *Act* contemplates that 30 days may not always permit timely filing and so builds discretionary provisions into the legislation . While these time limits are an important objective in seeking to ensure this goal of fairness for the parties is realized, they are not the only considerations at play. Moreover, as noted in previous Review Board decisions, the 30 day window is a fairly narrow period to bring such a matter forward.

Consequently, after considering the foregoing, the Board ruled that reasonable grounds had been established by the applicant to permit the Board to exercise its discretion in this matter. The application to extend the time to file was granted.

Case No 3:	Appeal of a disciplinary decision as a result of a public complaint
Nature of Complaint:	A Form 13 Notice of Review filed by the complainant requesting a review by the Nova Scotia Police Review Board of the November 22, 2002 decision of the Chief of the Truro Police Service
Hearing Dates:	June 26, 27, 2003
Before:	Ms. Marion Ferguson, Chair Mr. Lester Jesudason, Alternate Chair Mr. Charles Schafer, Member
Counsel:	Complainant on behalf of his daughter Mr. John Rafferty on behalf of Chief the Chief of Police Mr. David Fisher on behalf of the four named officers of the Truro Police Service
Date of Decisions:	October 29th, 2003

Summary of Decisions:

The complainant (Mr. "C") appealed a decision of Truro Police Chief that found that the named officers (one corporal, two constables and one cadet) had not breached section 5(1)(g)(iii) of the *Nova Scotia Police Act Regulations* in an April 5, 2002 incident involving his daughter (Ms. "C").

Ms. "C" had invited a few friends to her apartment for a celebration of her 18th birthday. She had arranged for her infant daughter to stay at her parent's home for the night. Ms. "C" told the Board that by 8:30 p.m. there were approximately "seven or eight people" in her apartment enjoying "music and some dancing." Around 9:05 p.m. herself and three other people decided to go for a drive. Ms. "C" stated the remaining guests left her apartment at the same time and went to apartment 11 across the hall.

Approximately one hour later Ms. "C" and her friends returned to the apartment building arriving at the same time a Truro Police Department van was pulling into the parking lot. It was Ms. "C"'s evidence that she did not realize that the police were there about her apartment. When the group got to the third floor there was

"loud, noisy music" playing in apartment 11, and when they arrived at her door people exited apartment 11 and followed her group into her apartment. Ms. "C" locked her door and the group made their way into the bedroom to sit and talk. Ms. "C" did not turn on any lights. Ms. "C" said she heard "yelling" and assumed it was the superintendent. Apparently, there was a history of discord between them, therefore, she chose not to reply. The next thing she heard was a bang as the door smashed up against the wall. She stated she next saw lights and then a police officer, who directed everyone to come out of the bedroom. In the kitchen, she met with a "lady cop," the corporal, who began questioning her.

It was Ms. "C"'s evidence that during that conversation in the kitchen the corporal did pretty much all of the talking; specifically," the lady cop degraded me and my baby," saying, "welfare was going to hear about it," that "her taxes should not go to supporting me" and questioning whether Ms. "C" would like to have "sole custody" of her daughter.

The corporal testified that she was the highest ranking officer that night . She stated that when she and her partner arrived they were met by the superintendents who she described as being upset about the noise complaint and the previous night's damage to their car. Another constable and cadet also arrived and it was explained to the Board that it is not unusual for more officers to arrive on calls regarding noise complaints as they often involve lots of people.

All four officers and the two superintendents then proceeded up to the third floor where they found apartment 12 quiet, but noise could be heard coming from apartment 11. Consequently, the corporal concluded that apartment 11 was actually the source of the superintendents' concern.

Knocking on that door and announcing "Truro Police," she entered the apartment, asking those inside to turn down the music. The people complied with the Corporal's request to turn down the music and the officers left. No arrests were made, nor was any liquor seized.

When the corporal returned to the hallway, she found the superintendent, Ms. "R", "mad at me" about the noise complaint involving apartment 12, which the superintendent said was the reason for the call to the police in the first place.

Admittedly, as an effort to placate Ms. "R", The corporal decided to knock on apartment 12, advising, "Truro Police, please open the door, I want to speak to you." but did not get a response. The corporal told Ms. "R", " there was nothing they could do," and then prepared to leave the scene. Ms. "R", became very upset and vocal and said something to the effect, "I will have to do this" proceeded to kick Ms. "C"'s door "right in."

Now faced with a non-secured apartment, the corporal described her and the other officers entry into the apartment. There was differing evidence on if one unresponsive occupant of the apartment was visible to the corporal prior to entering. The Board accepted that at this moment, the corporal's concern shifted to the safety of the unresponsive man and the potential safety of others who may be inside. The Board ruled that legal justification for the entry into apartment 12 has been established

According to Ms. "C" the police" asked who was over 19" and proceeded to dump out "anything that was opened." Ms. "C" and her friend, Ms. "B", both credibly testified that they witnessed one or more police doing so. Three of the officers denied doing this. The cadet constable was not present to give evidence and at the time of the hearing and was no longer a member of the Truro Police Service.

The Review Board after considering the totality of the evidence was unwilling to draw the adverse inference from the fact that the cadet constable was not called to testify. On this issue, the panel was unable to accept the evidence of one over the other and was unable to make a finding on this issue.

The Review Board ruled that the conversation between the corporal and Ms. "C" was brief and took place in a context that could be described as confused.

The Board commented that the confounding irony of the night's events was that it was Ms. "C" who became the focus of police attention when, in fact, she had done nothing wrong. Her apartment was damaged and the department of social services was contacted when there was not any reason for that to have been done.

The Review Board accepted that there was no malicious intent on the part of the police towards Ms. "C" and further found that the corporal and her fellow officers in no way approved of the actions of Ms. "R" kicking open Ms. "C's" apartment door. Moreover, the entire call lasted under 20 minutes and in that time the police were called upon to make lighting fast judgments, which the "wonderful illumination of hindsight" could not be used to microscopically examine it.

Nevertheless, the Review Board found that the police did show poor judgment on this call, especially after they were inside the apartment and had determined that the unresponsive male was going to be okay. However, the Review Board found that these judgment errors were not sufficient to establish the disciplinary default of abuse of authority under the *Police Act*

That being the finding, the Review Board added that in a rational world, Ms. "C" would be deserving of an apology for how the events of that night unfolded and recommended such an overture from the Truro Police Service and the corporal.

Case No 4: Appeal of a decision as a result of a public complaint

Nature of Complaint: A Notice of Review, in Form 13, filed by MR. "RH" in regard to his public complaint against two members of the Kentville Police Service and a decision by Chief of Police on the 8h day of November, 2001 before the Nova Scotia Police Review Board.

Hearing Dates: December 12, 2002

Before: Mr. Brian Creighton, Chair

Ms. Marion Ferguson, Alternate Chair

Mr. Orville Symonds, Member

Counsel: Complainant on behalf of himself and assisted by his father

Mr. David Fisher on behalf of the two named officers of the Kentville Police Service

Date of Decisions: October 29th, 2003

Summary of Decisions:

The complainant (Mr. "RH") was assisted in presenting his case by his father, ("Mr. HH"). The Chief, as a party to the proceedings, was also present, but was not represented by counsel.

The complainant at the time of the incident was 19 years old and resided at his parents home. Mr. "RH" testified that on July 4, 2001 he was driving through Centre Square with a friend "A", when he was hailed by another friend "B". Mr. "RH" stated he stopped and exited the car and walked about 20 or 25 feet to speak to his friend "B". He stated that his back was to the car. Shortly after he began to speak to his friend "B" he saw a marked police vehicle pull in. He was called over to the police vehicle and was asked to state the conditions of his undertaking. He stated that at the time he believed he was on a 7:00 o'clock curfew, and that he was not allowed to associate with anyone with a criminal record. At that point he stated the officers told him he was in "breach" because "Mr. KK", who has a criminal record, had entered his car. Mr. "RH" stated that he thought that this was ridiculous and turned to walk back to his car.

Mr. "RH" testified that the officers then pulled their vehicle around and returned to the position they had left. Mr. "RH" stated that at that time he observed Mr. "KK" exit his car and leave the area on a bike. Mr. "RH" returned to his car and began speaking to his friend "A" and within a few moments the officers approached him and told him he was under arrest for breach of probation. Mr. "RH" testified that before he could say anything else he was told he was resisting arrest. Mr. "RH" stated his face was pushed down on the hood of his car, he was handcuffed, put in the rear of the police car and taken to the Kentville Police station. Mr. "RH" stated he was outraged about being arrested, and that he was yelling and screaming at the officers.

Mr. "RH" was on a court undertaking for trafficking. Mr. "RH" also stated that at no time did the officers ask him his side of the events or allow him to explain that he was not aware of Mr. "KK" being in his car and that he had not had any contact with him.

Mr. "RH" entered photographs of the injuries he sustained which showed some bruising and abrasions on his hands, arms and wrists. Mr. "RH" also entered pictures of a dent to the hood of his father's car that he stated occurred when he was pushed down on top of it.

The Board was advised that Mr. "RH" was refused access to the police department's investigative file. The Board ordered that the file be produced for Mr. "RH" to review and have copies made if requested. The Board's policy is that all parties to a hearing before the Board should have access to the department's investigation files pertaining to complaint upon request. This ruling was made orally in a previous hearing, and the Board recognized that Chief MacLean may not have been aware of this.

On July 4, 2001 Constables "L" and "M" were on patrol. The officers observed that Mr. "RH" was in the front seat of an automobile in the parking area in Centre Square. They also observed Mr. "K" in the backseat of the same automobile. Mr. "K" is known by the officers to have a criminal record. The officers also observed other individuals in the area that they also identified as having criminal records. The officers did not immediately take any action but pulled their patrol car ahead to observe whether or not Mr. "RH" would leave the area.

After a short time, Constable "L" apprehended Mr. "RH" who was standing under a canopy adjacent to his vehicle. Constable "L" advised Mr. "RH" that he was placing him under arrest for a breach of undertaking. Mr. "RH" said "no fucking way". Mr. "RH" resisted being arrested and created a disturbance that attracted other young people in the area. After a brief struggle, and Mr. "RH" being argumentative with Constable "L", he was handcuffed and placed in the police vehicle. Mr. "RH" was then taken to the Police Station and was released 15 to 20 minutes later. Constable "L" stated that his use of force was in proportion to the resistance he was presented with by Mr. "RH" during the process of handcuffing him.

The Board heard evidence from two citizens who had observed the arrest of Mr. "RH". Both of these witnesses stated the Mr. "RH" was abusive, loud and aggressive toward the police officers and neither saw any abuse of force used in the arrest.

The Board was satisfied that Mr. "RH" did resist the arrest and as witnesses both of the citizens. The Board also found that Mr. "RH"' evidence was self serving and was undoubtedly frustrated by the undertaking and the effect it had on his lifestyle.

The Board found that the constables had lawful cause for believing Mr. "RH" had breached his undertaking and had reasonable grounds to arrest Mr. "RH" and remove him from the area where they believed the breach of undertaking was occurring. The officers did not arrest Mr. "RH" immediately so as to give him opportunity to leave the area. The officers are to be complimented on this use of discretion.

The Board found that the use of force used by Constable "L" was reasonable in the circumstances. The minor injuries suffered by Mr. "RH" were as a result of his resistance while he was being handcuffed. The Board further found that the allegations against Constable "M" were completely unsubstantiated because the arrest was effected by Constable "L".

The appeal was dismissed.

Source: Adapted from Statistics Canada, Police Resources in Canada 2004, catalogue no 85-225-X1E, reference period 2003 and found on page(s) 38 & 39

Nova Scotia 2003 Police Resources & Population

Police Force	Police Officers					
	Population	Male	Female	Total	Population per Police Officer	Other Personnel	Total Operating Cost
Population (100,000+)							
HalifaxRegional	211,607	357	46	403	525	213	40,546,735
Population (15,000 - 49,999)							
Cape Breton Regional	106,246	169	0	169	629	79	15,777,270
Population (5,000 - 14,999)							
Amherst	9,691	22	1	23	421	10	1,981,289
Bridgewater	7,904	19	1	20	395	9	1,856,744
Kentville	5,803	14	2	16	363	1	1,239,999
New Glasgow	9520	22	1	23	414	15	2,114,168
Truro	11,674	28	4	32	365	28	3,156,229
Westville	3939	7	0	7	563	4	622,416
Population (<5,000)							
Annapolis Royal	548	3	0	3	183	0	136,474
Springhill	4,177	10	0	10	418	6	917,405
Stellarton	4,867	10	1	11	442	10	1,110,023
Trenton	2,807	7	0	7	401	8	754,667

.. Not available for a specific reference period

... not applicable

Use caution in comparing forces: The number of officers may not reflect the number available for general community policing because some officers in certain communities are restricted to specific locations (e.g. ports, airports). Operational expenditures may vary considerably between police services for many reasons.

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